

thing as an injunction to restrain a libel, except in the recent case where Mr. Justice Chitty distinguished trade libels from other libels, and granted an injunction, a decision with which, within the last week or two, I have had occasion to express my entire concurrence. But with that exception, so far as I know, the Court has not of late granted an injunction to restrain a libel before the point has been submitted to a jury—in other words, on interlocutory application.

"Now, ought this to be an exceptional case? I see no reason for making an exception in favour of a case such as this. The balance of convenience does not seem to me to point in favour of granting an injunction, because though the sale of the work will no doubt go on, and though if it goes on it is injurious to the plaintiff's reputation—the injury will be continued—yet the injury must to a great extent be done by the mere publication, and after all success in the ultimate result would be quite satisfactory to the plaintiff. I mean if it were eventually determined that the plaintiff was right and could sustain an action of libel against the defendant by reason of this publication, then, not by the damages awarded, but by the mere verdict of the jury, he would have, I will not say rehabilitated, but maintained his reputation at the level at which it before existed. It cannot be suggested that the mere sale of a few copies more or less would place him in any worse position if eventually he succeeded; and, of course, if he did not then succeed, he has no reason to complain.

"Now on the balance of convenience I think I ought not to grant an injunction, especially it being of course understood that I express no opinion whether it is a libel or not. That is really the reason why the Court in these cases does not grant an injunction, because if it granted an injunction or even if it refused it on the other ground than the one I have mentioned, the Court would be obliged to express an opinion, and the Court ought not to express an opinion on a matter that is to be left to a jury.

"But the plaintiff's case has been put by Mr. Renshaw on another ground, which strikes me as extremely deserving of attention, though I do not think I ought to grant an injunction on that ground at the present moment. He says this is like the case of *Clarke v. Freeman*, and *Clarke v. Freeman* may be considered for this purpose as decided quite differently from the way in which it was decided. In that I follow him. I do not think that after the observations of Vice-Chancellor Malins, Lord Cairns, and Lord Selborne on that case I ought to hesitate to regard it as really erroneously decided; and I do not think that, having regard to Lord Cairns's observations on page 310 of the Second Chancery Appeals, in the case of *Maxwell v. Hogg*, I ought to doubt what the proper decision should have been in *Clarke v. Freeman*, or on what ground that proper decision would have been rested, because he says distinctly, speaking of it remembered in the Court of Appeal:—'It always appeared to me that *Clarke v. Freeman* might have been decided in favour of the plaintiff on the ground that he had a property in his own name.' The question of whether a libel was a fit subject for an injunction either on motion or at the trial was not discussed in *Clarke v. Freeman*. It is not discussed by Lord Cairns; it is not discussed by Lord Selborne, and it is not discussed by Vice-Chancellor Malins; but they all disapprove of the decision, and Lord Cairns says, 'because the plaintiff had a property in his own name, the name was invaded by the action of the defendant, and the plaintiff could therefore restrain the defendant from doing what he did on that ground.' That is entirely independent of libel.

"Now, can I decide this case on that ground in favour of the plaintiff? I think not, and I think not because when you come to test that argument according to my present opinion, you really come back again to the question of libel in this case, though you would not have done so in *Clarke v. Freeman*. The plaintiff's case on this part of it is that 'the defendant is publishing as my own what is not my own; that is to say, I am the author of an entire book; the defendant is publishing only part of it, and such part that really he is not publishing my work at all; he is bringing out what I never sanctioned as my work, and which cannot be fairly represented as my work, and therefore I complain of him using my name in connexion

with a book that is not mine.' It comes back to this. Is the book the plaintiff's or not?

"It is avowedly only part of it; but is it such a substantial part of it that it may be fairly called the plaintiff's? It is so unless the mutilations are such as to give the plaintiff a right of action for libel. So that, try it as you will, it comes back to the same point; and I think, therefore, I should be doing wrong in seizing hold of the doctrine, not of *Clarke v. Freeman*, but which ought to have been supported in *Clarke v. Freeman*, to give the plaintiff relief which ought, on the other hand, to be denied him because he is really bringing an action of libel. I, therefore, on those grounds, must refuse the motion, without expressing any opinion whether what has been done is injurious to the plaintiff's reputation or not.

"This is really the whole question in the case. If the case is tried out, there is nothing else to be tried; and, therefore, the proper way to deal with the costs is to make the costs of both parties costs in the action."



## CORRESPONDENCE.

PENTLAND FIRTH AND PENTLAND HILLS.

Oxford: July 25, 1892.

In my Rhind Lectures I failed to discuss the disconnection of these two names as thoroughly as I might have done. Since the publication of those Lectures my attention has been called to Blaeu's Maps of Scotland, especially part V. dated Amsterdam 1654. The Scotch maps were entrusted to "Pontius" and "Gordonius." From these I copy as follows:—Fol. 7, *Fretum Picticum hodie Pentland Fyrth* (twice); fol. 11, *Pentland Fyrth* (twice); fol. 97, *Pentland Fyrth*; fol. 115, *Fretum Pictlandicum* and *Pentland Fyrth*; fol. 133, *Pictland Fyrth*, and *Pentland*, or *Pictland Skerries*. Here Pentland is doubtless derived somehow from the Petlands firth of the Norsemen, who seem to have called Caithness and Sutherland Petland or Pictland; but when they turned Cape Wrath they found themselves in what they called Scottlands Fiorth, the sea of Scottland, or the Land of the Scots.

Now let me return to Blaeu's maps, namely, to fol. 37, which is devoted to "Lothian and Linlith"; there we have *Penkethland*, *Pentlandt Hill* and *Pentland Hill*; also the village of *Pentland*. Here a different combination is attested from that in "Pentland Fyrth"; and this is supported by Fordun's *Chronica Gentis Scotorum* as edited by Skene (Edinburgh, 1871) from MSS. of the sixteenth century, see especially pp. 284, 292, where he reads *Penland* and *Pentheland*. If Dr. Skene had any prepossession in the matter, it was his belief that Pentland is of the same origin in Pentland Firth and in Pentland Hills, so his evidence is all the more deserving of consideration. This is not all, for I have accidentally come across *Pentlandiskery*, p. 45—it is not in the index—where we have the Pentland Skerries referred to under a designation involving the spelling of the Pictish Pentland with the usual *tl*.

Now in the case of the Pentland Hills, I take the hill to be so called from the village of Pentland, and the two references by Fordun seem to be to the village, nothing being said about the hills. Was Pentland ever an important place? Was there a road leading to the south through it, or was it otherwise of any great strategic value? Such are some of the questions I should like to ask with regard to it and the passages in Fordun. But one would also like to know what spellings of the names here in point are given in the oldest manuscripts of that chronicle.

With regard to the *thl* of the Pentland Hill, it has its parallel, as will have been seen, in that of another Lothian place-name, *Penkethland*; and of the actual pronunciations of this word I have the following curious account

in a letter, written to me on March 23 last by my Edinburgh friend, Dr. Alfred Daniell:

"In the course of a conversation last summer with two East Lothian men, of whom one (since dead) was considerably over seventy and the other slightly over fifty years of age, the new branch railway through Pencaitland was discussed. As the talk became topographical, I sat for awhile quietly listening, and I was much interested to hear both pronounce Pencaitland as *Penkethlun* or *Penkethl'n*. I said nothing, but waited until I had thoroughly satisfied myself that I was correct about the *th*. As the topic became exhausted, I asked how Pencaitland was pronounced. 'As it is spelled, *Pen-cait-land*,' was the reply. 'Do you ever pronounce the *t* as if it were *th*?' 'No, never.' I then told them that they had been doing so for the past five or ten minutes. They would give no credit to that proposition; but eventually they suggested that they might have dropped into a schoolboy pronunciation of the word; it was, however, quite wrong even if they had done so; the right way to pronounce Pencaitland was the way it was spelled. I thought that was a very good illustration of the difficulty of getting authentic information as to local pronunciations."

Perhaps somebody acquainted with Pentland would inform us in what ways its name is still pronounced. In any case I take it that the *thl* in the two names is the modern Lothian representation of the Welsh sound of *ll*, which English people nowadays often equate with *thl*, a spelling that, in Wales, goes back, however, as far as the "Record of Carnarvon." Accordingly Penthland would be in Welsh "*Penllan*," and belong to the same category of names as *Penllech* and *Penllyn*; also *Henllan*, made into "*Hentland*" in Herefordshire. *Penkethland* would similarly be *Pencellan*, with the same *cellan* which occurs as the name of a parish in Cardiganshire, and as part of farm names like *Rhos Cellan* and *Nant Cellan*. The Welsh word *pen* "head, top, end," occurs also in *Pennycuick* in the neighbourhood of the Pentlands, and altogether the traces of a former occupation of the Lothians by Brythons seem to be unmistakable. On the other hand the name of the Pentland Hills has been supposed to prove the former presence of Picts. Now if, as I think, this name never had anything to do with the Picts, one would be glad to know accurately what evidence there is of a Pictish occupation of the Pentland district. The question is one of such interest as regards early Scottish history, that I hope to be forgiven for raising it in the ACADEMY.

J. RHYS.

## THE EARLY HISTORY OF BABYLONIA.

Athenaeum Club: August 5, 1892.

The general election has intervened, and absolutely distracted all other work, which accounts for my not having sent you another letter on the origins of Persian history, about which I think I have something to say that is new. It may be a short time now before I can resume the subject. Meanwhile, will you allow me to send you a note about early Babylonian history, which clears up a small point?

In the last volume of the *Records of the Past*, Mr. Pinches published a most interesting fragment of a Babylonian tablet. There has crept into his translation, by the merest inadvertence, a mistake which makes the story impossible to follow as it stands. Mr. Pinches has re-examined the tablet, and quite agrees with me. He had discovered in an American cuneiform tablet a transcription of the name hitherto read *Kara Murdas*, showing that it ought to be read *Kadisman Murus*. He has made the correction in line 5 of his translation of the new fragment, but has failed to do so in lines 12 and 14. The name ought to be read *Kadisman Murus* in all three places.